

REMARKS

The examiner has required an election in the present application between:

Species I, claimed in claims 1-6 and 8-12; and

Species II, claimed in claim 7.

For the purpose of examination of the present application, Applicants elect Species I, claimed in claims 1-6 and 8-12, with traverse.

Claim(s) 1-6 and 8-12 are directed to the elected species. At least claim 1 is generic.

The election of species requirement is respectfully traversed at least because the examiner has not identified any mutually exclusive species of invention. As provided by MPEP 806.04(e), “Species always refer to the different embodiments of the invention.” However, no different embodiments of the invention that allegedly correspond to different species have been identified. MPEP 806.04(e) further provides that “Claims themselves are never species”; however, the only indication of the allegedly different species is a listing of claims, contrary to the above language from the MPEP.

Section 806.04(f) of the MPEP provides that:

Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope.

In the present case, mutually exclusive species have not been identified. Instead, the Office Action asserts that the species are independent because claim 7 specifies “structure having different function.” Claim 7 further limits claim 1 from which it depends, but is in no manner “mutually exclusive” with regard to any other pending claim.

It is respectfully submitted that no basis for requiring an election of species has been

presented, and the election of species requirement is respectfully traversed. If the election of species requirement is not withdrawn, it is respectfully requested that the examiner 1) provide support for requiring election of species based on "structure having different function," 2) provide support for requiring an election of species based on listings of claims, and 3) identify the two mutually exclusive species that are believed to be present in this application by reference to figures or page and line numbers as required by the MPEP.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Scott Wakeman, Registration No. 37,750, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 
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